

1 JOEL M. SMITH (State Bar No. 050973)  
LEOPOLD, PETRICH & SMITH, P.C.  
2 2049 Century Park East, Suite 3110  
Los Angeles, California 90067-3274  
3 Tel: (310) 277-3333 • Fax: (310) 277-7444  
E-Mail: jsmith@lpsla.com/lpetrich@lpsla.com

4 Attorneys for Defendant  
5 BECKETT MEDIA, LLC

6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **WESTERN DIVISION**

11  
12 SUMMIT ENTERTAINMENT, LLC, a  
13 Delaware limited liability company

14 Plaintiff,

15 v.

16  
17 BECKETT MEDIA, LLC, a Delaware  
Corporation, and DOES 1-10, inclusive,

18  
19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CASE NO.: CV09-8161 PSG (MANx)**

**ANSWER OF DEFENDANT  
BECKETT MEDIA, LLC TO  
COMPLAINT OF SUMMIT  
ENTERTAINMENT, LLC**

**[DEMAND FOR JURY TRIAL]**

Complaint filed November 6, 2009

1 Defendant Beckett Media, LLC ("Defendant"), for itself and for no other  
2 defendant, in response to the Complaint of plaintiff Summit Entertainment, LLC  
3 ("Plaintiff") admits, alleges and denies as follows:

4 1. Admits that in Paragraph 1 Plaintiff has pled an Action that would meet  
5 the Jurisdictional requirements of this Court.

6 2. Admits that Paragraph 2 purports to set forth Plaintiff's legal contentions  
7 regarding "venue."

8 3. Denies for lack of sufficient knowledge or information each allegation in  
9 Paragraph 3.

10 4. Admits that Defendant is a Delaware Corporation that has a place of  
11 business in Anaheim, California.

12 5. Denies for lack of sufficient knowledge or information each allegation in  
13 Paragraph 5.

14 6. Denies for lack of sufficient knowledge or information each allegation in  
15 Paragraph 6.

16 7. Admits that Plaintiff was "involved in," and received credit, respecting  
17 the movie "*TWILIGHT*" and except for that admission, denies for lack of sufficient  
18 knowledge and information the remaining allegations in Paragraph 7, and asserts that  
19 the movie "*TWILIGHT*" speaks for itself as to its content.

20 8. Denies for lack of sufficient knowledge or information to form a belief as  
21 to the truth of the averments in Paragraph 8.

22 9. Denies for lack of sufficient knowledge or information to form a belief as  
23 to the truth of the averments in Paragraph 9.

24 10. Deny for lack of sufficient knowledge or information each allegation in  
25 Paragraph 10.

26 11. Admits that, among other things, Defendant is a publisher of sports and  
27 entertainment collectibles and memorabilia magazines.

1           12. Admits that [i] Defendant's magazines are distributed in "various outlets  
2 throughout the United States" and [ii] Defendant operates a website at  
3 **www.beckett.com**, which speaks for itself as to its content.

4           13. Admits [i] that Defendant marketed one of its "Teen Sensations"  
5 magazines, containing, *inter alia*, reproductions of photographs and a poster (and  
6 asserts that the photographs and the poster speak for themselves as to their respective  
7 content), [ii] that the word "twilight" appears on the cover of the said magazine and  
8 [iii] that the figures "U.S. \$9.99" appear on the cover of said magazine and [iv] that  
9 Ex. A to Plaintiff's Complaint appears to be a copy of the said magazine, and, except  
10 as admitted, denies the remaining allegations in Paragraph 13.

11           14. Admits [i] that the Plaintiff has used the "font ... on the left" and [ii] that  
12 the Defendant has used the font "on the right," and, except as admitted, denies the  
13 remaining allegations in Paragraph 14.

14           15. Admits [i] that Defendant received a letter from Plaintiff on or about  
15 September 1, 2009 and that Ex. B to Plaintiff's Complaint appears to be a copy of that  
16 letter and [ii] that before Defendant was able to respond to said letter, Plaintiff sent a  
17 second letter to Defendant, and Ex. C to Plaintiff's Complaint appears to be a copy of  
18 that second letter (and asserts that the said letters speak for themselves as to their  
19 respective contents), and, except as admitted, denies the remaining allegations in  
20 Paragraph 15.

21           16. Admits that, in or about mid-to-late September, 2009, Defendant's  
22 counsel communicated with Plaintiff's counsel regarding the dispute that is the subject  
23 of this Action, but denies that the communications are accurately alleged in the  
24 Complaint herein and asserts that the contents of the communications are  
25 inadmissible, *inter alia*, under Fed. Rules of Evid, § 408.

26           17. Admits that in late September, 2009, Defendant's counsel contacted  
27 Plaintiff's counsel regarding the dispute that is the subject of this Action, but denies  
28

1 that the communications are accurately alleged in the Complaint herein and asserts  
2 that the contents of the communications are inadmissible, *inter alia*, under Fed. Rules  
3 of Evid, § 408.

4 18. Admits [i] that, in or about early October 2009, Defendant marketed  
5 another one of its "Teen Sensations" magazines, containing, *inter alia*, reproductions  
6 of photographs and a poster (and asserts that the photographs and the poster speak for  
7 themselves as to their respective content), [ii] that the word "twilight" appears on the  
8 cover of the said magazine, [iii] that the figures "U.S. \$9.99 • Can. \$14.99" appear on  
9 the cover of said magazine and [iv] that Ex. D to Plaintiff's Complaint appears to be a  
10 copy of the said magazine, and, except as admitted, denies the remaining allegations  
11 in Paragraph 18.

12 19. Admits [i] that in or about early October, 2009, Defendant's counsel  
13 advised Plaintiff's counsel [a] that Defendant's access to Plaintiff's "publicity"  
14 website at **www.summitpublicity.com** had been expressly authorized and approved  
15 by Plaintiff and [b] that Plaintiff's "publicity" website at **www.summitpublicity.com**  
16 specifically provided downloadable photographs and other artwork relating to the said  
17 "Twilight Motion Pictures" for use(s) by those who were given access to said site by  
18 Plaintiff and Asserts that [iii] the website's "Terms of Use" and contents speaks for  
19 themselves, and otherwise denies the allegations of Paragraph 19 and specifically  
20 denies that the Defendant's "use" of the said website was in any way inconsistent with  
21 the so-called "Terms of Use of the Website."

22 20. Admits [i] that it requested a password and permission to use the website  
23 for "newsstand magazine coverage" and [ii] that it was given by Plaintiff a password  
24 and permission to use Plaintiff's website, and Asserts that the "Terms of Use"  
25 regarding Plaintiff's website speak for itself as to its contents, and Acknowledges that  
26 a copy of the Terms of Use of Plaintiff's website appear to be attached as Ex. E to  
27 Plaintiff's Complaint, and, except as admitted, Denies the remaining allegations in  
28

1 Paragraph 20 and specifically denies that Defendant's "use" of Plaintiff's "website"  
2 was inconsistent with the so-called "Terms of Use" respecting the "website."

3 21. Denies the allegations in Paragraph 21, and specifically denies that  
4 Defendant's conduct "creates the false impression that Summit endorsed, licensed or  
5 sponsored" Defendant's magazine.

6 22. Defendant Admits that it created its said "Teen Sensations" magazine  
7 without Plaintiff's prior written approval and Asserts [i] that all "editing, altering  
8 and/or modifying [of] Summit's copyright material without Summit's prior written  
9 approval," if any, is and was a "fair use" under the United States Copyright  
10 Trademark Laws, Asserts that the said "material" speaks for itself as to its contents  
11 and, except as admitted, Denies the remaining allegations in Paragraph 22 and  
12 specifically denies that Defendant's "use" of Plaintiff's "website" was inconsistent  
13 with the so-called "Terms of Use" respecting the "website."

14 23. Denies that it has used any copyrighted or trademarked material owned  
15 by Plaintiff in any form or fashion that [i] was not expressly authorized by Plaintiff,  
16 [ii] was not protected by the First Amendment to the United states Constitution and/or  
17 [iii] was not a "fair use" under the United States Copyright and Trademark Laws and,  
18 except as admitted, Denies the remaining allegations in Paragraph 23.

19 24. Denies [i] that any of its actions were unlawful and, hence, that any of its  
20 actions, in that regard, were "willful" and/or [ii] that it was required to or sought a  
21 "license" from Plaintiff to publish its "Teen Sensations" magazines, and Admits [iii]  
22 that it utilized, in its "Teen Sensations" publications, materials that had been made  
23 available to it by Plaintiff and [iv] that it did not cease publishing its "Teen Sensation"  
24 magazines when Plaintiff complained, and Asserts [v] that the contents of the  
25 Defendant's "Teen Sensations" magazines speak for themselves as to their respective  
26 contents and [vi] that Defendant does not intent to publish any "Twilight Fanzine[s]"  
27 as Defendant understands Plaintiff's use of that terminology, but, except as admitted,  
28



1 denies, generally and specifically, each and every remaining allegation and/or  
2 contention set out in Paragraph 24.

3 25. Admits that, in or about October and November of 2009, it offered for  
4 sale on ebay and on Defendant's website various printing plates for its "Teen  
5 Sensations" magazines and [ii] that copies of the e-bay listing and the listing on  
6 Defendant's website for the printing plates appear to be attached collectively as Ex. F  
7 to Plaintiff's Complaint.

8 26. Defendant repeats and realleges each and every allegation in Paragraphs  
9 1 through 25 above, as though fully set forth herein.

10 27. Defendant denies the contentions in Paragraph 27.

11 28. Defendant denies the contentions in Paragraph 28.

12 29. Defendant denies the contentions in Paragraph 29.

13 30. Defendant denies the contentions in Paragraph 30.

14 31. Defendant denies the contentions in Paragraph 31.

15 32. Defendant denies the contentions in Paragraph 32.

16 33. Defendant denies the contentions in Paragraph 33, but admits that  
17 15 U.S.C. § 1117 entitles the prevailing party, under certain circumstances and  
18 conditions, to an award of attorneys' fees and costs of suit in a copyright infringement  
19 action.

20 34. Defendant repeats and realleges each and every allegation / contention of  
21 Paragraphs 1 through 33, above, as though fully set forth herein.

22 35. Defendant denies the contentions in Paragraph 35.

23 36. Defendant denies the contentions in Paragraph 36.

24 37. Defendant denies the contentions in Paragraph 37 and, specifically,  
25 denies that Plaintiff has suffered any damage or that it is entitled to an Injunction  
26 restraining Defendant from any acts.

27 38. Defendant generally denies the contentions of Paragraph 38, and  
28

1 specifically denies that Plaintiff is entitled to recover from Defendant any damages.

2 39. Defendant denies the contentions in Paragraph 39, and in addition,  
3 Defendant contends that Plaintiff is not entitled to any of Defendant's gains, profits,  
4 and advantages.

5 40. Defendant denies the contentions in Paragraph 40, and specifically denies  
6 that Plaintiff is entitled to an award of punitive damages or any damages at all.

7 41. Defendant repeats and realleges each and every allegation / contention of  
8 Paragraphs 1 through 40 above, as though fully set forth herein.

9 42. Defendant denies the contentions of Paragraph 42.

10 43. Defendant denies the contentions of Paragraph 43.

11 44. Defendant denies the contentions of Paragraph 44.

12 45. Defendant generally denies the contentions of Paragraph 45, and  
13 specifically denies that any of Defendant's acts are likely to damage Plaintiff and that  
14 Plaintiff is entitled to a Preliminary and/or Permanent Injunction enjoining Defendant  
15 from any acts or conduct in connection with the promotion, advertising and sale of  
16 any "goods" by Defendant.

17 46. Defendant generally denies the contentions of Paragraph 46, and  
18 specifically denies that Plaintiff is entitled to recover from Defendant any damages.

19 47. Defendant generally denies the contentions of Paragraph 47, and  
20 specifically denies that Plaintiff is entitled to recover from Defendant any "gains,  
21 profits, or advantages" Defendant has obtained as a result of its acts.

22 48. Defendant denies that Plaintiff is entitled to any of the remedies available  
23 under 15 U.S.C. § 1117 and/or § 1118.

24 49. Defendant repeats and realleges each and every allegation / contention of  
25 Paragraphs 1 through 48 above, as though fully set forth herein.

26 50. Defendant denies the contentions of Paragraph 50 regarding the Content,  
27 Photographs, and Poster Images, and asserts that the Photographs, Content, and Poster  
28

1 Images speak for themselves as to their content, and denies for lack of sufficient  
2 knowledge or information and belief that any of the Content, Photographs, or Poster  
3 Images are “original works of authorship owned by Summit.”

4 51. Defendant denies for lack of sufficient knowledge or information and  
5 belief the contentions in Paragraph 51.

6 52. Defendant admits that Plaintiff maintains a website at  
7 www.summitpublicity.com, where various Content, Photographs and Poster Images  
8 are available for downloading and duplicating, and that anyone can access the website  
9 that [i] has an Internet connection and [ii] is authorized to do so by Plaintiff.

10 53. Defendant denies, generally and specially, the contentions in Paragraph  
11 53.

12 54. Defendant generally denies the contentions in Paragraph 54 and  
13 specifically denies that it “was ... aware ... [that its publication of any of its “Teen  
14 Sensation” magazines] would constitute copyright infringement.”

15 55. Defendant generally and specially denies the contentions in Paragraph  
16 55, except that Defendant admits that it did not cease publishing its “Teen Sensation”  
17 magazines or attempt to recall them immediately upon receipt by Beckett of a letter  
18 from Summit’s counsel contending that Beckett’s magazines “infringed [Summit’s]  
19 copyrights and trademark rights.”

20 56. Defendant generally denies the contentions in Paragraph 56 and  
21 specifically denies that Plaintiff has suffered any damages and/or is entitled to recover  
22 any damages, including, without limitation, the “gains, profits and/or advantages”  
23 derived by Beckett from its publications and/or statutory damages under the Copyright  
24 Act of the United States.

25 57. Defendant denies the contentions of Paragraph 57.

26 58. Defendant repeats and realleges each and every allegation of Paragraphs  
27 1 through 57, above, as though fully set forth herein.



1           59. Defendant denies the contentions of Paragraph 59, generally and  
2 specifically.

3           60. Defendant generally denies the contentions of Paragraph 60 and  
4 specifically denies that Plaintiff has been damaged, irreparably or at all, and that  
5 Plaintiff is entitled to any relief, particularly: (a) injunctive relief, restraining and  
6 enjoining Defendant from any lawful acts; (b) awarding Plaintiff any damages; (c)  
7 requiring Defendant to account to Plaintiff for Defendant's profits from the marketing  
8 of its "goods"; (d) the award of any of Defendant's profits to Plaintiff; and / or (e)  
9 punitive (or any other) damages.

10           61. Defendant repeats and realleges each and every allegation / contention of  
11 Paragraphs 1 through 60, above, as though fully set forth herein.

12           62. Defendant denies that Defendant and Summit entered into a "contract"  
13 and alleges that the "terms of use" that are a part of [www.summitpublicity.com](http://www.summitpublicity.com) speak  
14 for themselves as to their contents.

15           63. Defendant denies the contentions of Paragraph 63.

16           64. Defendant denies that it has contract with Plaintiff, but asserts that, if  
17 there is any such "contract," Defendant did not exceed the scope thereof, and  
18 otherwise denies the contentions in Paragraph 64.

19           65. Defendant admits that, if Plaintiff has been harmed by any such  
20 "contract" (as alleged to exist in Paragraph 64), Plaintiff it has been harmed by its  
21 failure to comply with the terms of any such "contract."

22           66. Defendant denies that it has breached any contract, and that Plaintiff is  
23 entitled to any remedies.

24           ///

25           ///

**Affirmative Defenses**

**FIRST AFFIRMATIVE DEFENSE**

**(No Claim Stated)**

67. Plaintiff's Complaint fails to state facts sufficient to constitute a claim for relief against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

**(17 U.S.C. § 412)**

68. To the extent Plaintiff has failed to comply with the provisions of 17 U.S.C. § 412, Plaintiff's purported claims for relief are limited and/or barred.

**THIRD AFFIRMATIVE DEFENSE**

**(17 U.S.C. § 411 (a))**

69. To the extent Plaintiff has failed to comply with the provisions of 17 U.S.C. § 411 (a), Plaintiff's purported claims for relief are barred.

**FOURTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

70. Plaintiff's purported claims for relief are barred in whole or in part by reason of its unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

**(Lack of Standing)**

71. Plaintiff's purported claims for relief are barred in whole or in part because of Plaintiff's lack of standing to prosecute its claims.

**SIXTH AFFIRMATIVE DEFENSE**

**(Fair Use)**

72. To the extent any such "use" occurred, which Defendant denies, but here assumes merely for the sake of argument, Plaintiff's purported claims for relief are

1 barred in whole or in part by the doctrine of fair use.

2  
3 **SEVENTH AFFIRMATIVE DEFENSE**  
4 **(First Amendment)**

5 73. To the extent any such “use” occurred, which Defendant denies, but here  
6 assumes merely for the sake of argument, Plaintiff’s purported claims for relief are  
7 barred in whole or in part because the purported use of Plaintiff’s purportedly  
8 copyrightable materials constituted a use protected by the First Amendment to the  
9 United States Constitution.

10 **EIGHTH AFFIRMATIVE DEFENSE**  
11 **(De Minimis Use)**

12 74. To the extent any such “use” occurred, which Defendant denies, but here  
13 assume merely for the sake of argument, Plaintiff’s purported claims for relief are  
14 barred in whole or in part by the doctrine of *de minimis* use.

15 **NINTH AFFIRMATIVE DEFENSE**  
16 **(No Willful Infringement)**

17 75. To the extent any such “use” occurred, which Defendant denies, but here  
18 assume merely for the sake of argument, Plaintiff’s purported claims for relief are  
19 barred in whole or in part because Defendant’s use was not willful.

20 **TENTH AFFIRMATIVE DEFENSE**  
21 **(Statue of Limitations)**

22 76. Plaintiff’s claim for relief is barred and limited by the provisions of  
23 17 U.S.C. § 507.

24 **ELEVENTH AFFIRMATIVE DEFENSE**  
25 **(Protectability)**

26 77. To the extent that Plaintiff relied on facts or purported facts, ideas,  
27  
28

1 scenes-a-faire, clichés and conventions of story telling, its claims are barred.

2 **TWELFTH AFFIRMATIVE DEFENSE**  
3 **(Laches)**

4 78. Plaintiff's purported claims and any prayer for relief based thereon or  
5 otherwise are barred by the doctrine of laches.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**  
7 **(Waiver)**

8 79. Plaintiff's purported claims and any prayer for relief based thereon or  
9 otherwise are barred by waiver.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**  
11 **(Estoppel)**

12 80. Plaintiff's purported claims and any prayer for relief based thereon or  
13 otherwise are barred by the principle of estoppel.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**  
15 **(Consent)**

16 81. To the extent any such "use" occurred, which Defendant denies, but here  
17 assume merely for the sake of argument, Plaintiff's purported claim and any prayer for  
18 relief based thereon or otherwise are barred in whole or in part because Plaintiff  
19 expressly or impliedly consented to the complained of conduct.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**  
21 **(Failure to Mitigate)**

22 82. After the occurrence of the alleged loss and damage to Plaintiff, Plaintiff  
23 failed and refused to mitigate its damages, and by reason thereof, is barred from  
24 recovery from Defendant.

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**(Proof of Copying of Protectable Expression)**

83. The First Amendment to the United States Constitution requires that Plaintiff must prove by clear and convincing evidence that Defendant has copied protectible expression from Plaintiff's work.

**EIGHTEENTH AFFIRMATIVE DEFENSE**  
**(Proof of Allocating Defendant's Profits)**

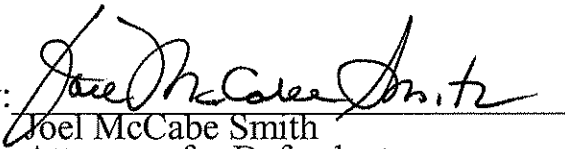
84. The First Amendment to the United States Constitution requires that Plaintiff, not Defendant, must meet its burden of proving by clear and convincing evidence that portion, if any, of Defendant's profits that is allocable to the alleged infringement by that Defendant.

WHEREFORE, Defendant prays as follows:

1. That the Complaint be dismissed with prejudice and that Plaintiff take nothing herein;
2. That Defendant be awarded its costs of suit, including its reasonable attorneys' fees, incurred in defense of this action; and
3. That Defendant be awarded such other and further relief as the Court may deem just and proper.

DATED: November 30, 2009

LEOPOLD, PETRICH & SMITH  
A Professional Corporation

By:   
Joel McCabe Smith  
Attorneys for Defendant  
Beckett Media, LLC



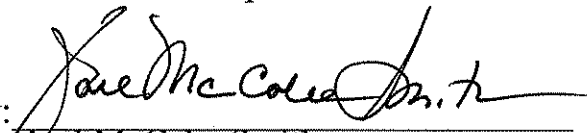
**JURY DEMAND**

Beckett demands a trial by Jury of all issues triable by Jury.

Respectfully submitted,

DATED: November 30, 2009

LEOPOLD, PETRICH & SMITH  
A Professional Corporation

By: 

Joel McCabe Smith  
Attorneys for Defendant  
Beckett Media, LLC

**PROOF OF SERVICE****STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274.**

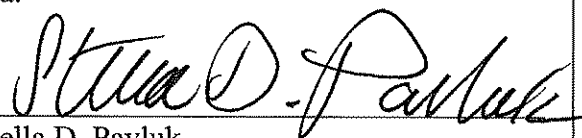
On November 30, 2009, I served the foregoing document described as **ANSWER OF BECKETT MEDIA, LLC TO COMPLAINT OF SUMMIT ENTERTAINMENT, LLC [DEMAND FOR JURY TRIAL]** on the interested parties in this action.

- ☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- ☐ **BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- ☐ **BY OVERNIGHT MAIL:** I deposited such documents at the Federal Express Drop Box located at 2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274. The envelope was deposited with delivery fees thereon fully prepaid.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- ☐ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 30, 2009, at Los Angeles, California.

  
Stella D. Pavluk

**SERVICE LIST**

Attorneys for Plaintiff

Jill M. Pietrini  
Barry E. Mallen  
Kathryn A. Vaclavik  
Stuart H. Katz  
MANATT, PHELPS & PHILLIPS, LLP  
11355 West Olympic Blvd.  
Los Angeles, CA 90064  
Tel: 310-312-4000  
Fax: 310-312-4224